

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2012-M-00693-SCT

***RE: ORDER ESTABLISHING CIVIL AND
CRIMINAL DIVISIONS IN THE HINDS COUNTY
CIRCUIT COURT***

TRIAL JUDGE:	HON. TOMIE T. GREEN
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
NATURE OF THE CASE:	CIVIL - OTHER
DISPOSITION:	DISMISSED AS MOOT - 12/06/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

CHANDLER, JUSTICE, FOR THE COURT:

¶1. On April 17, 2012, Senior Circuit Judge Tomie T. Green entered an order establishing civil and criminal divisions in the Circuit Court of the First Judicial District of Hinds County pursuant to Mississippi Code Sections 9-7-3(5) and 9-7-25(2). Circuit Judge Jeff Weill Sr. filed a Petition for Emergency Judicial Relief in this Court challenging the constitutionality of the order. On November 1, 2012, Judge Green entered an order withdrawing the order establishing civil and criminal divisions in the Circuit Court of the First Judicial District of Hinds County.

¶2. Because the April 17, 2012, order establishing civil and criminal divisions in the Circuit Court for the First Judicial District of Hinds County has been withdrawn, the issues

raised by Judge Weill’s Petition for Emergency Relief are moot. Therefore, we dismiss the Petition.

FACTS AND PROCEDURAL HISTORY

¶3. Hinds County makes up the entirety of the Seventh Circuit Court District, and four circuit judges are elected to serve that district. Miss. Code Ann. § 9-7-23(1) (Rev. 2002); Miss. Code Ann. § 9-7-25(1) (Rev. 2002). Currently, the four circuit judges are Senior Judge Tomie T. Green, Judge Winston Kidd, Judge Jeff Weill Sr., and Judge William A. Gowan. The cases in the First Judicial District of Hinds County are divided among the four judges. Cases from Hinds County’s Second Judicial District are presided over by Judge Gowan. The county seat of the First Judicial District of Hinds County is Jackson, and the county seat of the Second Judicial District of Hinds County is Raymond.

¶4. On April 17, 2012, Judge Green entered an “Order Establishing Civil and Criminal Divisions in the Hinds County Circuit Court” (the “Order”), which was to go into effect August 1, 2012. Under the Order, the First Judicial District of Hinds County would be divided into civil and criminal divisions, and two circuit judges would be assigned to each division – Judge Weill and Judge Kidd to the civil division, and Judge Green and Judge Gowan to the criminal division.

¶5. In a “Preliminary Statement” to the Order, Judge Green explained that she thought the split divisions would “promote a more efficient, effective[,] and timely resolution of all civil and criminal cases” because the judges would be able to “exercise more flexibility in management” of their dockets. Judge Green stated that the Order was entered “[i]n

accordance with Sections 9-7-3(5) and 9-7-25(2) of the Mississippi Code.” Section 9-7-3 provides:

(5) In a district having more than one (1) office of circuit judge, there shall be no distinction whatsoever in the powers, duties[,] and emoluments of those offices except that the judge who has been for the longest time continuously a judge of that court . . . shall be the senior judge. The senior judge shall have the right to assign causes and dockets and to set terms in districts consisting of more than one (1) county.

Miss. Code Ann. § 9-7-3(5) (Rev. 2002). Section 9-7-25(2), pertaining specifically to the Seventh Circuit Court District, provides:

(2) While there shall be no limitation whatsoever upon the powers and duties of the said judges other than as cast upon them by the Constitution and laws of this state, the court in the First Judicial District of Hinds County, in the discretion of the senior circuit judge, may be divided into civil and criminal divisions as a matter of convenience, by the entry of an order upon the minutes of the court.

Miss. Code Ann. § 9-7-25(2) (Rev. 2002).

¶6. Pursuant to the Order, all new cases filed after August 1, 2012, would have been assigned to one of the two judges in the respective divisions. In addition, all cases pending on the judges’ dockets at that time would have been reassigned to a judge in the appropriate division. Specifically, all civil cases on Judge Green’s docket would have been reassigned to Judge Kidd, and all criminal cases on Judge Kidd’s docket would have been reassigned to Judge Green. All civil cases on Judge Gowan’s docket would have been reassigned to Judge Weill, and all criminal cases on Judge Weill’s docket would have been reassigned to Judge Gowan.

¶7. On May 2, 2012, Judge Weill filed a Petition for Emergency Judicial Relief with this Court, asking this Court to vacate the Order. Judge Weill asserted that Senior Judge Green

lacked authority to: (1) divide the Hinds County Circuit Court into civil and criminal divisions, (2) arbitrarily assign circuit judges to preside over only one division, and (3) unilaterally dictate the reassignment of cases currently pending on the judges' dockets. Judge Weill argued that Judge Green's actions went beyond the intent of Section 9-7-25(2). Judge Weill also argued that the Order did not comport with Rule 27(g) of the Rules of Appellate Procedure, which provides:

. . .The setting of terms and assigning of causes and dockets in the chancery and circuit courts shall be done fairly considering the relative work loads of the judges and the right of litigants within the district to fair and reasonable access to all of the judicial officers as well as reasonable accommodation of the requests and needs of all judges within the district. Further, the assignment of cases and dockets shall be done through a systematic plan recognizing the criteria set out herein.

M.R.A.P. 27(g).

¶8. Judge Kidd and Judge Gowan responded separately to Judge Weill's petition. Both took the position that Judge Green had authority under Section 9-7-25 to divide the docket into criminal and civil divisions. Judge Green also filed a motion requesting a meeting with this Court, which was granted. After meeting with the circuit judges on June 27, 2012, this Court entered an order staying the implementation of the Order and asked the judges to file supplemental pleadings addressing the constitutionality of Mississippi Code Section 9-7-25(2). Pursuant to Rule 44 of the Mississippi Rules of Appellate Procedure, this Court also invited the Attorney General to respond. Judge Weill filed a Supplemental Petition, and Judge Green filed a Motion to Dismiss and Supplemental Response.¹ Judge Green moved

¹ Because the petition is dismissed as moot, the Motion to Dismiss and Supplemental Response are dismissed.

to dismiss the Petition for Emergency Relief on the ground that the Order was not reviewable under Rule 27(g) of the Rules of Appellate Procedure. The Attorney General filed an *amicus curiae* brief defending the constitutionality of Section 9-7-25(2).

¶9. During the pendency of Judge Weill’s petition, on November 1, 2012, Judge Green entered an order withdrawing the Order. This order states, in its entirety:

WITHDRAWAL OF “ORDER ESTABLISHING CIVIL AND CRIMINAL DIVISIONS IN THE HINDS COUNTY CIRCUIT COURT”

The undersigned hereby withdraws the Court’s order entered on April 7, 2012 (Book 731, Page 210) whereby the Court exercised its discretion, pursuant to §§ 9-7-3(5) and 9-7-25(2) of the Mississippi Code (1972, as amended), to divide the case dockets into civil and criminal divisions. The Court remains of the opinion that the return of the Seventh Circuit District of the State of Mississippi to a split division is the most effective and efficient method for the management of both the civil and criminal cases filed in Hinds County Circuit Court. However, the indefinite delay in the resolution of the issues surrounding the April 17, 2012 court order has created a stalemate in the ongoing litigation and trial settings for hundreds of cases that require timely settings for the 2013 terms of Court.

During the pendency of the challenge surrounding the April 17, 2012 order, all circuit judges have continued to preside over trials, set and conduct hearings and resolve other matters in both civil and criminal cases. We will continue to pursue innovative, progressive and cooperative means to effectuate long term solutions that will minimize the sluggishness and inconsistency in management which has plagued the dockets of the county for so many years. The interests of justice and the interests of the citizens of Hinds County in the timely disposition of both criminal and civil cases pending in our Court demands no less.

IT IS THEREFORE ORDERED, AND ADJUDGED that the “April 17, 2012 Order Establishing Civil and Criminal Divisions in the Hinds County Circuit Court” is **hereby withdrawn** for further consideration/modification by this court.

SO ORDERED, AND ADJUDGED this the 1st day November 2012.

s/ Tomie T. Green, Senior Circuit Judge

DISCUSSION

¶10. Judge Green’s withdrawal of the Order renders this controversy moot. This Court set out the standard for determining mootness in *Fails v. Jefferson Davis County Public School Board*, 95 So. 3d 1223, 1225 (Miss. 2012), stating that “[a] case is moot so long as a judgment on the merits, if rendered, would be of no practical benefit to the plaintiff or detriment to the defendant.” *Id.* (quoting *Gartrell v. Gartrell*, 936 So. 2d 915, 916 (Miss. 2006)). We recognized that we lack authority to “entertain an appeal where there is no actual controversy.” *Id.* Further, “[c]ases in which an actual controversy existed at trial but the controversy has expired at the time of review, become moot. We have held that the review procedure should not be allowed for the purpose of settling abstract or academic questions, and that we have no power to issue advisory opinions.” *Id.* (quoting *Allred v. Webb*, 641 So. 2d 1218, 1220 (Miss.1994)).

¶11. Judge Green has withdrawn the order challenged by Judge Weill’s petition. Therefore, there is no actual controversy. The issues raised in Judge Weill’s petition are moot. While Judge Green has indicated that she may reconsider or modify the Order, at this point it has been withdrawn, and the substance of any subsequent reconsidered or modified order is unknown. Because there is no exception to the mootness doctrine for hypothetical future controversies, it would be inappropriate to address the issues at this time. Neither the four circuit judges nor the citizens of Hinds County would benefit from this Court’s resolution of issues raised by an order that is no longer in place. Because this matter is moot, Judge Weill’s petition is dismissed.

¶12. **DISMISSED AS MOOT.**

CARLSON AND DICKINSON, P.JJ., RANDOLPH, LAMAR, KITCHENS, PIERCE AND KING, JJ., CONCUR. CARLSON, P.J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY DICKINSON, P.J., AND LAMAR, J.; RANDOLPH, KITCHENS, CHANDLER AND PIERCE, JJ., JOIN IN PART. WALLER, C.J., NOT PARTICIPATING.

CARLSON, PRESIDING JUSTICE, SPECIALLY CONCURRING:

¶13. Although I fully concur with the majority opinion concerning the issue of mootness, I feel compelled to write further. This Court generally refrains from expressing personal opinions. However, because the circuit judges came to this Court seeking assistance, and because this Court has spent a substantial amount of time reviewing the pleadings, conducting research, and meeting with the judges, I believe that in today's case, it is appropriate to interject my opinion, from the viewpoint of my nineteen years as a circuit judge as well as a Supreme Court justice for the past eleven years.

¶14. At the outset, I acknowledge that Hinds County presents different issues than other circuit courts in Mississippi. Hinds County is the most populous county in Mississippi,² and the crime rate in Hinds County is significantly higher than that in the rest of the state.³ Because the state capitol is located in Hinds County, most cases involving state entities are

² See *U.S. Census Bureau Delivers Mississippi's 2010 Census Population Totals, Including First Look at Race and Hispanic Origin Data for Legislative Redistricting* (Feb. 3, 2011), <http://2010.census.gov/news/releases/operations/cb11-cn14.html> (last visited Dec. 3, 2012).

³ See *Hinds County, Mississippi Crime Statistics*, <http://recordspedia.com/Mississippi/Hinds-County/Crime-Statistics> (last visited Dec. 3, 2012) ("Crime Comparison" chart shows significantly more crimes committed in Hinds County than in other large counties in Mississippi); *Jackson Crime Rate Report*, <http://www.cityrating.com/crime-statistics/mississippi/jackson> (last visited Dec. 3, 2012) (charts show the number of crimes in Jackson to be at least double that of the rest of Mississippi).

filed in Hinds County courts.⁴ For these reasons, more cases are filed in the Hinds County Circuit Court than in any other, and Hinds County presents issues that are unique to that circuit.⁵

¶15. First, I commend Judge Green’s effort to address some of the problems that have plagued the Hinds County Circuit Court for many years. But it is my opinion that, regardless of the merits of the challenges to Judge Green’s civil and criminal divisions, the divisions would not resolve the problems in Hinds County, because the issues have not been correctly defined. An answer to the wrong problem is no answer at all. What has become abundantly clear to me through the pleadings, motions, and our discussions with the judges is that the problem is not that the circuit judges need more flexibility in scheduling trials; the problem is that the judges have been far too lenient with litigants and with the district attorney’s office. Litigants have been permitted to dictate the movement of cases through the judicial system, and those in the district attorney’s office have been allowed to control the dockets.

¶16. On the first page of Judge Green’s Order, she stated: “Many civil cases have lingered much too long on the dockets of the Hinds County [C]ircuit [C]ourt, without systematic

⁴ “It is well settled that for cases in which the defendant is a state agency, venue is proper in Hinds County, the seat of state government.” *Office of Governor Div. of Medicaid v. Johnson*, 950 So. 2d 1033, 1035 (Miss. Ct. App. 2006) (citing *Moore v. Bell Chevrolet-Pontiac-Buick-GMC, LLC*, 864 So. 2d 939, 945 (Miss. 2004)). *See also, e.g.*, Miss. Code Ann. § 25-9-132 (Rev. 2010) (decisions of the Mississippi Personnel Board are appealed in “the circuit court of the principal county of the employee’s employment or the Circuit Court of the First Judicial District of Hinds County”); Miss. Code Ann. § 77-7-295 (Rev. 2009) (Mississippi Public Service Commission decisions shall be appealed to the Hinds County Circuit Court, First Judicial District).

⁵ *See* Carroll H. Ingram, *Study on the Mississippi Judicial System* 26, 29 (Dec. 2011), <http://courts.ms.gov/reports/JudicialReport-1.pdf> (last visited Dec. 3, 2012).

docket calls, scheduling orders[,] or realistic trial dates. Continuances have become unavoidable agents of stagnation.” I agree that, generally, civil cases remain on the dockets far too long in Hinds County, and the same is true for many criminal cases. Judge Green correctly identified contributing factors to that problem – litigants are not given scheduling orders or trial dates, and judges have not had routine docket calls. Thus, it seems obvious to me that, in an effort to move cases through the system, the circuit court should require scheduling orders, the prompt setting of trial dates, and routine docket calls.

¶17. I recognize that the current judges have made an effort to have more docket calls, and I think that is a step in the right direction; but I am of the opinion that the judges should implement an internal requirement that all judges have at least one civil docket call per year. The Hinds County Circuit Court recently proposed new local rules, which were approved by this Court, that included several administrative provisions, deadlines for certain requests and cancellations, and a mediation requirement.⁶ The proposed rules also included a scheduling-order requirement, but that was not retained in the final version, because this Court is considering a similar addition to the Mississippi Rules of Civil Procedure. I think the new rule requiring scheduling orders will drastically improve the rate at which cases move through the court system. In addition, mandatory scheduling orders should include trial dates, which hopefully will be an answer to a longstanding problem in Hinds County Circuit Court.

¶18. To Judge Green’s comment that “[c]ontinuances have become unavoidable agents of stagnation[,]” I remind the circuit court that stagnation due to granting continuances is not

⁶ *Local Rules for Seventh Circuit Court District of Mississippi*, <http://courts.ms.gov/rules/circuitrules/7thCirRecodification.pdf> (last visited Dec. 3, 2012).

entirely “unavoidable.” If multiple continuances are granted in every case, and this results in stagnation, then continuances should not be granted. Litigants should be instructed that motions for extension of time and continuances will be granted only in extraordinary situations, and substantial proof should be required in support of those requests. “[T]he trial court has broad discretion in the granting or refusing of a continuance or delay[,]” and trial judges should exercise that discretion wisely. *McClendon v. State*, 335 So. 2d 887, 888 (Miss. 1976).

¶19. The circuit court also should enforce other rules at its disposal, such as Rule 4.04 of the Uniform Rules of Circuit and County Court Practice, which provides that “[a]ll discovery must be completed within ninety days from service of an answer by the applicable defendant.” URCCC 4.04(A). That rule requires “good cause” for an extension of the ninety-day deadline. *Id.* Rule 37 of the Mississippi Rules of Civil Procedure gives the court authority to sanction parties or attorneys for failure to cooperate or for abuse of the discovery process. Miss. R. Civ. P. 37(e). Rule 40 of the Mississippi Rules of Civil Procedure provides that the court does not have to wait for parties to request a trial date before putting a case on the trial docket. Miss. R. Civ. P. 40(a). The circuit court should use and enforce these procedural rules for a more efficient progression of cases.

¶20. In our meeting with the circuit judges, it was disclosed that Hinds County has been accused of “not trying cases.” (This comment was not made by anyone in the meeting, but was a reference to something said in the media.) To defend against that allegation, one circuit judge explained that the reason more criminal cases are not set for trial is because assistant district attorneys can prepare for only a few cases each week. Judge Gowan made a similar

statement in his response brief: “[T]rials are not had every week. The assistant district attorneys and public defenders can only prepare for two to four trials per week[,] and it is routine for defendants to plea[d] either the week prior to or the week of trial.” From these comments, it is apparent that the assistant district attorneys are controlling the docket. That is not the job of anyone in the district attorney’s office. The responsibilities of the district attorney are set forth in Mississippi Code Section 25-31-11. Sections 25-31-5 and 25-31-6 pertain to assistant district attorneys. Nowhere in those sections are they given responsibility for setting the docket. Rather, judges are responsible for maintaining their dockets. *See* URCCC 2.03, 9.02; Miss. R. Civ. P. 40.

¶21. It is my opinion that the fact the assistant district attorneys apparently have decided that they will prepare for only two to four trials per week is unacceptable. Other districts set the docket ten to fifteen cases deep, anticipating that defendants will offer pleas prior to trial, or that continuances may be necessary in some cases for any number of valid reasons. The district attorney and assistant district attorneys should always be ready for trial, and trial dockets should be set without regard to their preferences. If two judges set trials at the same time involving the same assistant district attorney, it is the assistant district attorney’s responsibility to have an attorney in the courtroom to prosecute those cases. That is not the circuit court’s problem. The circuit judges should implement rules and enter orders, if necessary, to control their dockets. As this Court has stated previously:

Our trial judges are afforded considerable discretion in managing the pre-trial discovery process in their courts, including the entry of scheduling orders setting out various deadlines to assure orderly pre-trial preparation resulting in timely disposition of the cases. Our trial judges also have a right to expect compliance with their orders, and when parties and/or attorneys fail to adhere

to the provisions of these orders, they should be prepared to do so at their own peril.

Bowie v. Montfort Jones Mem'l Hosp., 861 So. 2d 1037, 1042 (Miss. 2003) (citations omitted). If the assistant district attorneys violate the rules, they should be sanctioned. I strongly advise the circuit judges to start setting more cases for trial, and to stop letting the district attorney's office control their dockets.

¶22. Finally, I take this opportunity to emphasize Canon 3 of the Mississippi Code of Judicial Conduct. Regardless of the type of case or the docket to which a judge is assigned, judges must abide by the following standards:

(1) A judge shall hear and decide all assigned matters within the judge's jurisdiction except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacities, and shall require similar conduct of lawyers, and of their staffs, court officials, and others subject to their direction and control.

...

(8) A judge shall dispose of all judicial matters promptly, efficiently[,] and fairly.

Miss. Code of Judicial Conduct, Canon 3B. The Comment to Canon 3B(8), requiring the prompt and efficient disposal of all matters, provides:

In disposing of matters promptly, efficiently[,] and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. . . . A judge should monitor

and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays[,] and unnecessary costs. . . .

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

Miss. Code of Judicial Conduct, Canon 3B(8) cmt.

¶23. In my opinion, the circuit-court judges would be wise to keep these standards in mind and to enforce them at all times. Finally, I opine that any efforts in the future by the Hinds County Circuit Court to implement a case-assignment system will prove again to be futile, absent consideration of these suggestions I have discussed today.

DICKINSON, P.J., AND LAMAR, J., JOIN THIS OPINION. RANDOLPH, KITCHENS, CHANDLER AND PIERCE, JJ., JOIN IN PART.